IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL APPEAL NO.153 OF 1989

The State of Maharashtra ...Appellant
(Orig.Complainant)

V/s

1. Ahamad Alli Sayyad
3. Shoukat Ajij Sayyad
4. Ismail Ajij Sayyad
5. Julekhan w/o Ajij Sayyad
6. Nasima Ajij Sayyad
All residents of Room No.133.
New Medina Mashid, Opposite
Shiledar Wada, Sangli. ...Respondents
(Orig.Accused)

Shri. D.S.Mhaispurkar, A.P.P.for the State.
Mr.S.D.Khot with Shri. N.V.Pradhan for the Respondent Nos.1 and 3 to 6.

CORAM : SMT.RANJANA DESAI AND ABHAY S. OKA,JJ
DATED : 6TH DECEMBER, 2004.

JUDGMENT:(PER A.S.OKA, J)

1. By this appeal filed by the State of Maharashtra, the challenge is to the Judgment and order dated 30th November, 1988 passed by the learned IInd Additional Sessions Judge, Sangli by which the Respondents were acquitted of the offences punishable under sections 304-B read with section 34 of the Indian Penal Code as well as of the offences punishable under section 498-A and 306 read with section 34 of the said Code.

2. The Respondents are the accused. The Respondent

No.1 is the husband of deceased Shahanajbi. The Respondent No.2 is the father-in-law of the deceased. The Respondent Nos.3 and 4 are the brothers of the Respondent No.1. The Respondent No.5 is the mother-in-law of the deceased and the Respondent No.6 is sister of the Respondent No.1. The case of the prosecution is that after the marriage between the deceased and the Respondent No.1 which took place on 4th March, 1987, the Respondents in furtherence of their common intention subjected the deceased to cruelty and harassment from time to time. The deceased was subjected to cruelty with a view that she should compel her relatives to meet the unlawful demands of the Respondents of golden chain, wrist watch and valuable security. The allegation is that on account of failure of the relatives of the deceased to meet such demands, the Respondents subjected the deceased to cruelty. It is alleged that the wilful conduct of the Respondents of beating the deceased and other acts were grave in nature and likely to drive the deceased to commit suicide. The case is that the deceased actually committed suicide on 4th March, 1987. The F.I.R. was filed by the father of the deceased. The defence of the Respondents was of total denial.

3. The prosecution examined ten witnesses. P.W.1 Imamsaheb is the uncle of the deceased and P.W.2

Hashmatabi is the mother of the deceased. P.W.3 Hashmat Begam is a material witness. P.W.4 Badashah as well as P.W.7 Kisan and P.W.8 Julekhan turned hostile. P.W.5 is one Dastgir and P.W.6 is one Dhondiram. P.W.Nos.9 and 10 are the Police Officers. The documentary evidence produced by the prosecution is in the form of marriage yaadi, inquest panchnama, panchnamas of the attachment of articles, report of the Chemical Analyser, a map of the scene of the offence and post mortem notes.

4. The father of the deceased expired before the trial commenced and, therefore, he could not be examined. P.W.1 Imamsaheb deposed that when marriage between the Respondent No.1 and the deceased was settled it was agreed to pay dowry of Rs.2001/-. He had stated that when the deceased came back to her house after staying ten days with the Respondent No.1, she narrated to her father that she was being illtreated over the demand for chain, a ring and wrist watch and her father should provide the said articles. He stated that the deceased informed that the Respondent Nos.1,2 and 5 were demanding the articles. The case made out by the said witness is that after the deceased went back to the matrimonial home he alongwith his wife visited the matrimonial home when the Respondents started hurling abuses at them.

5. He stated that one Hashmatabi proposed to the father of the deceased that the deceased should be sent to the house of the Respondent No.1 and she offered to mediate in the matter. The deceased approached the said Hashmatabi and requested her to persuade her father not to send her back to the matrimonial home. The witness stated that he also tried to persuade the father of the deceased but, the father of the deceased was bent upon sending the deceased back to the matrimonial home. He stated that one motorcyclist met his brother on 4th March, 1987 and informed his brother that deceased has met with some danger and, therefore, he should immediately rush to Sangli. He stated that when he alongwith his brother went to the house of the Respondents he saw that the deceased was lying in half burnt conditon and she had already expired. The said witness was extensively cross-examined by the Respondents. P.W.No.2 is the mother of the deceased. She stated that her daughter stayed with the Respondent No.1 for five days and thereafter she resided with her for a period of one month. She stated that the deceased complained that she was being harassed on account of demand of a chain and a ring by all the Respondents and they were also making demand for a wrist watch. She deposed that after two months the deceased came back to her house and made a similar complaint against the Respondents. She stated that at the intervention of

Hashmatabi the deceased was taken back to the house of the Respondent No.1 and one month thereafter the deceased expired. The said witness is also extensively cross-examined by the Respondents. P.W.No.3 Hashmat Begam deposed that she took the deceased to her matrimonial home and she had adviced the accused to live harmoniously and peacefully with the deceased. The witness has not stated anything about the allegations against the Respondents.

6. P.W.No.4 Badshaha turned hostile. P.W.No.5 Dastgir deposed that at the time of settlement of the marriage, the father of the deceased agreed to pay dowry of Rs.2001/-. He deposed that the deceased used to meet him very often and used to complain about the illtreatment given by the Respondents on account of failure of her parents to comply with the demand made by the Respondents. P.W.No.5 Dastgir is extensively cross-examined by the Respondents. P.W.No.6 Dhondiram is a witness who deposed regarding the talks which took place at the time of settling the marriage. He generally stated about the grievance made by the deceased with him regarding the illtreatment. P.W.No.7 and P.W.No.8 are declared as hostile. P.W.No.9 is the Police Officer who drew the inquest panchnama and who recorded the statements of certain witnesses. P.W.No.10 is the Investigating Officer who recorded the statements

of various witnesses.

7. The learned A.P.P., appearing for the State submitted that the oral testimony of P.W.1, P.W.2, P.W.5 and P.W.6 was sufficient to prove the guilt of the accused. He submitted that the fact that the deceased was being harassed by the Respondents on account of demands made by them is established. He submitted that P.W.5 and P.W.6 were independent witnesses who have deposed about the illegal demands made by the Respondents. He submitted that the evidence of P.W.3 has been misread by the learned Sessions Judge. The learned counsel for the Respondents has supported the impugned judgment and order.

8. With the assistance of the counsel appearing for the parties we have perused the notes of the evidence. We have carefully considered the submissions made by the learned A.P.P. Perusal of the evidence of P.W.1 shows that he has not given any particulars of the nature of harassment to the deceased by the Respondents. There are material contradictions in the evidence of the P.W.1 and P.W.2 as regards duration of the stay of the deceased at the place of her parents. He has deposed about his visit to the house of the Respondents. He has however, not deposed that at that time any demand for any articles was made by the Respondents. P.W.2 who is

the mother of the deceased has merely stated that the Respondents used to harass the deceased. She has also not spelt out the nature of the harassment at the hands of the Respondents. The evidence of P.W.2 is very vague and lacks material particulars. She has made vague and general statements regarding the demands made by the Respondents. P.W.No.6 Dhondiram in his evidence has deposed that the deceased was being tortured and was beaten by the Respondent No.1. However, P.W.1 and P.W.2 have not come out with the said version. Infact, the evidence of P.W.5 and P.W.6 is not consistent with the evidence of P.W.1 and P.W.2.

9. It is pertinent to note that none of the witnesses examined by the prosecution have attributed any specific role to any of the accused persons. All of them have come out with very general and vague allegations against all the Respondents. None of them have spelt out the specific role played by any particular accused. These are the only material witnesses examined by the prosecution. After having examined the evidence on record we are of the view that the conclusions drawn by the learned Sessions Judge are possible conclusion on the basis of the evidence on record. If the findings recorded by the learned Sessions Judge are borne out of record and are on the basis of the possible conclusions which can be drawn on the basis of the evidence on

record, no interference can be made in this appeal against acquittal. We see no merit in the appeal and the same deserves to be dismissed. Accordingly, the appeal against acquittal is dismissed.

SMT. RANJANA DESAI,J

SHRI. ABHAY S. OKA,J